Supreme Court, U.S.
FILED

97 2022 JUN 15 1998

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

EUGENE L. PUTNAM
Petitioner

v.

RICHARD PROULX
MITCHELL AND STEARNS, ATTORNEYS

On Petition For Writ Of Certiorari
Maine Supreme Court

PETITION FOR WRIT OF CERTIORARI

Eugene L. Putnam, ProSe
Eugene L. Putnam, Consulting
Forester, Surveyor
Box 13
Hampden, Maine 04444-0013
(207)862-3763

HCPP

QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court Judge err in 11 of her findings of fact, essentially all of her findings that supported her decision?

2. Did the State Superior Court treat Putnam equally with Proulx under the State of Maine and U.S. Constitutions, Amendment 14, Section I, when it stated it cannot re-decide the facts and must affirm if no evidence or no inferences may be drawn from evidence up on appeal?

3. Did the State Supreme Court err when it decided what the contract was (that the contract was to go all the way through the surveying process to include the final step - the recordable plan) between Putnam and Proulx, or did they err when they supported the District Court findings on breach of contract (which were not supported by the evidence)?

4. Did the Maine Supreme Court err in its findings that the District Court in small claims session could dismiss Putnam's claims against the law firm of Mitchell and Stearns

without his getting to ask them a single question after the State accepted his required filing fee for both parties to get them there for trial?

5. Will justice be served to the future well being of the citizens of this country if this case is not considered before the United States Supreme Court?

6. Did this decision discriminate against an open ended contract that was still open ended when it became final?

7. The Administrative Office of the Courts in Maine have the following as written policy on small claims matters:

> "a plaintiff may appeal only on questions of law, and is not entitled to a new trial. A defendant may request a new trial".

Two questions,

> 1) Is Maine not denying equal rights?
>
> 2) How can determination of fact be legally excluded from appeal?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition.

The opinion of the three State of Maine Courts appears at Appendix A to the petition.

JURISDICTION

The date on which the highest state court decided my case was March 17, 1998. A copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Maine Rules of Small Claims Procedure, Rule 11, Appeal - Must be only on issue of Law, not fact.

- Constitution of the United States, Article VI - State Judges are bound by it.

Amendment 9 - Rights retained by the people

Amendment 14 - Civil Rights

- State of Maine Constitution

  Section 1 - Natural Rights

  Section 6-A - Prohibition of discrimination

  Section 24 - Other rights not impaired

- State of Maine Rules for Licensed Surveying Practice

STATEMENT OF THE CASE

This matter involves a dispute over compensation ($1,482, plus $55 costs) for surveying work Appellant-Plaintiff Putnam did for Appellee-Defendant Proulx in their own Town of Hampden, Maine.

Defendant Proulx and his neighbor had a disagreement as to where their common property line was and he (defendant) hired Plaintiff on an hourly basis, plus expenses, to set the line and then to find out if all of his buildings were all on his own property. Appellant Putnam carried his survey all the way through (to include - an accurate map but not one of quality or to record in the State deed register) except for the final stage, a recordable plan, and then gave all developed (deed description suitable for recording, and the above map) materials to Proulx to take to a lawyer, to see if the lawyer wanted to try an adverse possession claim based on shown material by Putnam on a final plan or by some other means as it was determined parts of buildings were not on his own land. The lawyer then told Putnam he would not be paid anything, even if he produced a recordable plan. The lawyer then proceeded to hire a second surveyor.

Both surveyors agreed that at least part of the buildings were on some one else's land.

What had started as a basic survey to find out where a line was, escalated into something else once scheming lawyers and a second surveyor got involved: no recordable plan was asked for, or produced, prior to Defendant Proulx asking Plaintiff to stop work. Proulx told Putnam to stop work before the plan was produced.

Plaintiff Putnam asked District Court, District Three, Division of Southern Penobscot, setting as the small claims court, for labor and expenses totaling $1,481.51 and costs of $55. Surveyor Day was paid ±$1,750 for basically the same work.

Plaintiff Putnam was awarded nothing.

APPELLANT Putnam asked Maine Superior Court, Penobscot County, for the same amounts as above and it agreed with the lower court that Putnam should not be paid for his work.

Maine Supreme Court ruled the same way.

Arguments used by Appellant upon appeal in Superior Court were a) 9 stated errors in fact finding by the District Court Judge, b) error in dismissing charges against the law firm Mitchell & Stearns even without them presenting a defense - due process was denied, and c) error in going along with a local court custom of siding with the consumer in small claims cases if a lawyer gets involved for the consumer.

Superior Court stated they cannot re-decide facts and must affirm the lower court decision unless there is no evidence or no inferences in the record to support the decision. It did not address (b) dismissing charges against the law firm, or (c) siding with a consumer-lawyer combination.

In State Supreme Court, which also affirmed the lower court decision, arguments used were a) same 9 errors in fact finding as above plus two other errors on what was fact, b) same error in dismissing charges against the law firm, c) same error in going along with the consumer if supported by a lawyer in small claims court, d) error in not considering justice under the Constitution (both State and U.S.).

Bill of Rights - Article III, V, VI-2, Amendments 9 and 14: Plaintiff was not treated equally with defendant during appeal, and e) error by the Superior Court in stipulating that all appeals from district court must be based on law rather than fact - again not equal rights.

The State Supreme Court addressed only whether there was a breach of contract or not, and whether the law firm Mitchell & Stearns should have been dismissed from hearing. They gave no reasons on the latter, in the former, they quoted three cases in Maine where the decision or breach of contract was based on fact (hence they could not re-decide fact?)

None of my other arguments were addressed.

REASONS FOR GRANTING THE PETITION

In reference to No. 5 preceding, an injustice to the country if the case is not heard, a terrible injustice will have been done, not only to Putnam, but quite possibly, to future right and wrong of this country, if this case is not considered by the U. S. Supreme Court.

According to Supreme Court Rules, 1997 Revisions, Stern, Gressman, et als: "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings" appears at the bottom of page 19. One page 81, it is stated "review in this court (U. S. Supreme) is not a matter of right, but of judicial discretion". Same page, "the primary concern is not to correct errors in lower court decisions, but...issues of importance beyond the particular facts and parties beyond. The court grants and hears arguments in only about 1% of the cases that are filed each term".

If the foregoing is true, that only 1% gets audience, or review of only 110 is made out of 7,000 applicants and "rarely granted if on the basis of erroneous factual findings" and "primary concern is not to correct errors in lower court

decisions" are true, imagine the infitestimal opportunities you, the U.S. Supreme Court members get to hear from us on issues of fact when only one of us out of perhaps millions make the sacrifice in time and money to even solicit you in the first place.

Please consider the following of me:

1957-74 successful employment with a business.
1974-present successful with forming and running my own company. During the first 20 years with my own company some 35-40 clients were taken to court for non-payment of their bills, representing some 7% of my total clients. Of these 7%, 80% were ordered by the courts to pay the amount of my bills, half of the 20% remaining ordered to pay at least part. In all but the most recent of the last four court attempts, still using the same type contract, I get 55%, 0, 0 and 0 in judgment. The 55% one was used first on appeal by me as a guinea pig through State Supreme Court: judgment affirmed. The third was also tried there May 7 of this year, judgment affirmed. The fourth is awaiting a lost transcript, it too is before our State Supreme Court. One new judge, Judge Hjelm, decided 2 of these 4, one case was transferred directly to Superior

Court for hearing, one (this one) was decided by a judge who benefited from the written remarks in the docket of the Judge Hjelm (see Appendix C) who ruled earlier against me twice - and who I requested not be assigned to me on this case. I have since requested that neither Judge Hjelm nor Gunther hear my cases.

Any complaint to Judicial Conduct Review in Maine of Judge Hjelm in the two lost cases cannot be divulged by me, and becomes public only when they report it to Maine Supreme Court.

In the case at hand of the three attorneys involved as co-defendant Mitchell & Stearns, any complaints to the Board of Overseers of the Bar of Maine must be kept confidential and in such case will most certainly be ruled "if you were not their client you have no complaint".

In this case, Attorney Haddow of Mitchell & Stearns law firm refused payment of $300 - $350 for doing a final plan and the $1,481 leading up to doing the plan - and then arranged the same work by another surveyor for $1,750. Judge Gunther then ruled Breach of Contract against me and the two courts following said "me too".

The same attorney who switched my case from District Court to Superior Court, just pre Judge Hjelm's appointment to the Bench, is the same one opposing me in the case of the lost transcript, and who recently teamed up with the same Judge Hjelm above to get our University of Maine star football quarter back's drunken driving charge thrown out of court on a technicality. I can document this.

Appeal of decisions particularly in Penobscot County, Maine, is a waste of time. I have proved this four consecutive times now. Because I work out of an office that is within ten miles of two other counties (Waldo and Hancock) I regularly do business in all three counties.

District Court Judges cannot be given carte blanche on what is fact, particularly when new or otherwise only appointed because of politics. It isn't constitutional in my opinion that they be immune from review of their ability to judge.

If you want the source of a lot of problems of justice in this country, look at the facts where it all started - and the facts themselves probably never

got a review by other than the instant Judge.

I'm not even sure it is constitutional for you to refuse to consider this case - but I guess I will find out. I guarantee you are going to get a second chance with my other case the Maine Supreme Court has just considered (it was Judge Hjelm also) if I can find the time from work to do it, as he persists in making decisions based on other than justice.

Local judges and local lawyers get too tight, particularly on small claims matters, once the judge can write checks that never go through audit. I believe it is my right under the State of Maine and U. S. Constitutions to be treated equally with the other party on appeal. I have already (hopefully) made my contribution to helping educate this young judge, and to helping keep a few lawyers honest, and at great sacrifice to me.

It is now time for you to consider my request for the opportunity to get audience on being paid for the original services provided. These two cases before Judge Hjelm, and this one before Judge Gunther, have cost me dearly in attorney fees and lost time on appeal.

In reference to #3 preceding, the 2 part question on contracts, a) what was the contract, and b) was the contract breached, a review of the testimony (transcript) will show the contract was open-ended, it went from Step A, to B, etc. Putnam testified this way and Proulx did not dispute it. At the end of several steps Proulx paid, and the job continued for some $1,482 more. With ±$350 more work to go, the final plan, Proulx stopped the job. Both courts have mistakenly said the contract went through the final plan stage. AS to the second part, the breach, Proulx's lawyers would allow Putnam to finish only if the $1,700 were done for nothing. The second surveyor took my provided products (descriptions, preliminary map stage print) and proceeded from there: Proulx breached the contract, my work product to date should therefore be paid for. See Appendix E for maps and plans and their place in the contract (a map is a map, a plan a map to be recorded).

As to question #4, the dismissal of charges against the law firm Mitchell & Stearns, Attorney Rosenblatt's firm absorbed this other firm into its structure after the accused had perpetrated the breach of contract <u>with Putnam</u>, and as an aside during (or even

after) one of its principals was before the Bar on a real estate complaint of several years standing. Attorney Rosenblatt represented Mitchell & Stearns at this particular trial at hand. Proulx represented himself. I paid money for audience with Proulx. I paid extra money for audience with Mitchell & Stearns. Mitchell & Stearns had the answers to the case but I was not allowed to get at them.

In reference to #2, the decision of the Superior Court Justice: He says he cannot re-decide the facts, there is sufficient evidence. Why review it if he cannot change it? Did he find sufficient evidence to support Law only?

On a separate matter, the conduct of attorneys, Mitchell & Stearns lawyers interceded on matters they were not even retained for. There was no complaint from Proulx. They saw the opportunity to make some money and the chance to increase the business of another surveyor - at my expense. This action is permissible under our State Bar Rules. Only a federal authority can regulate this dishonest activity by lawyers - this case needs a hearing to help slow down this activity that all America feels is so reprehensible.

In relation to #6, possible discrimination against all open-ended contracts, or contracts taken by companies who feel it is unethical to bid, or take jobs on the basis of bids: even if these contracts are written a lawyer can still step in anywhere, by precedent of this case at hand, and cut the contractor out of his constitutional right to own property and be happy (if his property has mortgaged the business) if he persists in using open ended contracts. Is this not both discriminatory and unconstitutional?

On a strictly constitutional matter, the State of Maine is forbidden by the U.S. Constitution, Amendment #14, to deny me my equal rights. They did deny them on considerations during appeal: the facts had already been decided, defendant Proulx has to have been considered superior, not equal, during appeal.

I have another case coming right along behind this one, as mentioned previously, almost a carbon copy: same court, same second surveyor, same Judge Hjelm I have complained about (to end up with the Judge I got with this case because I complained, see Appendix C), same breach of contract, same open-ended contract, same results - except it gets worse; and they will keep getting worse

as poor case law allows rotten lawyers to make worse case law.

In contrast to the wording of Findings and Order of this case, Judge Gunther, please review findings and order of Judge Clapp (Appendix D) on my most recent case since this one, April 3, 1997.

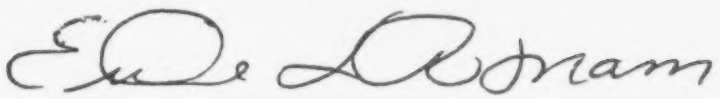
In summary, a presentation on many matters by a lawyer to a lawyer (on the bench) will keep going from bad to worse until a lay person directly presents to the U.S. Constitution and the matter gets knocked back to ground level again.

I have to have audience, however, in order to do that, and I respectfully request same.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Eugene L. Putnam

Date: June 12, 1998

APPENDIX A

FINDINGS, AND ORDER, OF THE THREE MAINE COURTS: DISTRICT, PENOBSCOT SUPERIOR, MAINE SUPREME

STATE OF MAINE
PENOBSCOT, SS

DISTRICT COURT
DISTRICT III
Div'n of S.Penobscot
Docket No. 96-SC-647

EUGENE PUTNAM

VS

FINDINGS AND ORDER

RICHARD PROULX

This matter was heard on Plaintiff's small claim to recover a bill for services rendered as a surveyor. The defense was failure of performance.

The bill in question relates to services performed on or after September 14, 1995. Prior to that time, Plaintiff had been paid for his work to date. The Court finds that the work to be done following September 14 included the following: additional Registry work to rule out any possibility that the lines were as Mr. Proulx wished them to be, setting pins, preparing a plan depicting

the lines as laid out, and preparing deed descriptions reflecting the lines as laid out.

From the testimony of Mr. Putnam and Richard Day, a surveyor ultimately retained to repeat some of the work done by Mr. Putnam, the Court understands that Hampden was once part of Hancock County, and that certain old records are there. In his discussions regarding the further work, Mr. Putnam mentioned doing a search in the Hancock County records. According to Mr. Day, an old deed affecting the property is, in fact, in the Hancock Registry. Mr. Putnam never went to Hancock County, and his final work does not reflect any investigation there.

Mr. Putnam set pins on the lines as he found them, and produced deed descriptions and a map corresponding thereto. The map produced did not, he concedes, qualify for recording in the Registry. Mr. Proulx's attorney refused to use the deed descriptions unless the map could be recorded, and advised Mr. Proulx that the materials provided were worthless.

The Court finds that Mr. Putnam's contractual obligation was for a

recordable map. For the document to have any real benefit, it must be available in the Registry for reference. This was Mr. Proulx's reasonable expectation. Ultimately Mr. Day was retained to produce the map. His investigations led to a different conclusion as to the lines, based in part on research in Hancock County.

As argued by Mr. Putnam, the Court is not in a position to determine where the lot lines are based on the testimony at this hearing. It is not necessary to do so to rule on the claim.

The Court finds that Mr. Putnam materially failed to perform his obligation by doing no research in Hancock County and by failing to produce a recordable map. Given the breach in performance, the retaining of a subsequent surveyor was reasonable. Since Mr. Putnam's pin placement was rejected by that surveyor and by Mr. Proulx, no payment is due for such part performance as Mr. Putnam did complete.

In the absence of full performance, no compensation is warranted.

THE ENTRY IS:JUDGMENT FOR DEFENDANT RICHARD PROULX.

January 30, 1997

s/Jessie Gunther
District Judge

Note: This order is entered without the benefit of Mr. Day's letter to Mr. Proulx, an exhibit which was accidentally returned from the file to Mr. Proulx, with no copy retained.

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. AP-97-19

EUGENE L. PUTNAM
Plaintiff,

v.

RICHARD PROULX and
MITCHELL AND STEARNS,

ORDER

This matter is before the Court for decision on Plaintiff's appeal.

The parties waived oral argument and submitted the matter for decision on the record and their memoranda.

On appeal the court cannot re-decide the facts. Even if a different fact finder might have reached a different result, this Court must affirm the judgment of the District Court unless there is no evidence in the record, and no inferences that may reasonably be drawn from the evidence to support the District Court result, C.f.Van Voorhees v. Dodge, 679 A.2d 1077, 1080 (Me.1996)

There is sufficient evidence in the record to support the District Court findings.

Therefore, the Court ORDERS:

1. Appeal DENIED;

2. District Court judgment AFFIRMED;

3. REMANDED to District Court.

Dated: September 29, 1997

s/Donald G. Alexander
DONALD G. ALEXANDER,
JUSTICE, SUPERIOR COURT

Order: Filed and entered
Superior Court
September 30, 1997
Penobscot County

MAINE SUPREME JUDICIAL COURT

Report of Decisions
Decision No. Mem98-54
Docket No. Pen97-637

EUGENE L. PUTNAM

v.

RICHARD PROULX, et al.

Submitted on Briefs March 13, 1998
Decided March 17, 1998

Panel: WATHEN, C.J., and ROBERTS, CLIFFORD, RUDMAN, DANA, LIPEZ, and SAUFLEY, JJ.

MEMORANDUM OF DECISION

Eugene L. Putnam appeals from a decision of the Superior Court (Penobscot County, *Alexander, J.*) affirming a judgment in the District Court (Bangor, *Gunther, J.*) for Richard Proulx and Mitchell & Stearns. Contrary to Putnam's contention that it was error (sic) for the District Court to find that he failed to perform his part of a contract with Proulx, the record supports the findings of the District Court. *See VanVoorhees v. Dodge*, 679 A.2d 482, 484 (Me. 1996) (Whether there

has been a breach of contract is a question of fact.); *Seashore Performing Arts Ctr., Inc. v. Town of Old Orchard Beach,* 676 A.2d 482, 484 (Me. 1996)(The intent of the parties in entering a contract is a question of fact.); *June Roberts Agency, Inc. v. Venture Properties, Inc.*,676 A.2d 46, 48 (Me. 1996)(Whether a contract exists is a question of fact.). Moreover, the court did not err in dismissing Putnam's claim against Mitchell & Stearns.

The entry is:

Judgment affirmed.

Clerk of the Law Court

s/James Shute
James Shute

For plaintiff:

Eugene L. Putnam
P O Box 13
Hampden, ME 04444-0013

Attorneys for defendants:

Jon A. Haddow, Esq.
Farrell, Rosenblatt & Russell
P O Box 738
Bangor, ME 04402-0738
(for Richard Proulx)

Nathaniel M. Rosenblatt, Esq.
Farrell, Rosenblatt & Russell
P O Box 738
Bangor, ME 04402-0738
(for Mitchell & Stearns)

APPENDIX B

U. S. AND STATE OF MAINE CONSTITUTIONS

CONSTITUTION OF THE UNITED STATES

ARTICLE. VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment 9

Rights retained by the people

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(Some people feared that the listing of some rights in the Bill of Rights would be interpreted to mean that other rights not listed were not protected. This amendment was adopted to prevent such an interpretation.)

Amendment 14

Civil rights

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(The phrase "due process of law" has been ruled to forbid the states to violate most rights protected by the Bill of Rights. The statement that a state cannot deny anyone "equal protection of the laws" has provided the basis for many Supreme Court rulings on civil rights.

MAINE CONSTITUTION

Article I.Declaration of Rights

Section 1.Natural rights. All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among

which are those of enjoying and

defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Section 6-A. Discrimination against persons prohibited. No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.

Section 24. Other rights not impaired. The enumeration of certain rights shall not impair nor deny other retained by the people.

APPENDIX C

ORDER THAT CAUSED DISTRICT JUDGE JESSIE GUNTHER TO HEAR THE INSTANT CASE

STATE OF MAINE PENOBSCOT,SS.	DISTRICT COURT DISTRICT III Div'n of S.Penobscot Docket No. 96-SC-647

Eugene L. Putnam
Plaintiff

v.

Richard Proulx,et al.,
Defendant

ORDER

The Plaintiff has forwarded to the undersigned a series of letters exchanged by him and the Committee on Judicial Responsibility. The court regards this tender as utterly improper not only because it involves a matter still pending (a case apparently now on appeal, which gave rise to the Plaintiff's institution of a grievance with the Committee although the

Committee dismissed the grievance without seeking a response from the court), but because hearing on the instant matter is scheduled before the undersigned on January 10, 1997. (The court has no way of knowing whether the Plaintiff is aware of the identity of the judge scheduled to preside, but his correspondence indicates familiarity with the identity of the local District Court judges and thus of at least the possibility that the case is scheduled to be heard by the undersigned.)

It is well-established that a judge need not recuse himself simply because a party to a pending action has filed a professional complaint against him. However, the ad hominem nature of the Plaintiff's written comments puts the undersigned in an impossible situation. If the court were to hear cases in which the Plaintiff appeared as a party and ruled in his favor, there clearly would be the appearance that the court submitted to the pressure he has attempted to inject into the court's evaluation of his cases. On the other hand, if the undersigned were to rule against him, there clearly would be the appearance of retribution. While the court is satisfied that the Plaintiff's correspondence to the Committee would not in fact constitute the basis for

actual prejudice against him, the appearance of a taint is unavoidable, and the court thus recuses itself from this case.

The need to reschedule this matter does not end the problem created by the Plaintiff's decision to volunteer the written material to the court. (It bears note that one of the letters from the Committee's executive secretary, included in the materials recently received, confirms that the undersigned was not informed that the Plaintiff in fact filed a grievance against the undersigned.) That material includes a copy of a letter from the Defendant in which he expressly indicates his satisfaction with Judge Ronald Russell. Ordinarily, recusal by one of the Bangor judges would result in the case being rescheduled before the other judge. Were that done here, however, it would create the perception that the Plaintiff was attempting to judge-shop. Thus, this clerk will reschedule this case to a date when neither the undersigned nor Judge Russell is scheduled to hear small claims cases.

Dated: December 26, 1996

s/Judge Hjelm
JUDGE, MAINE DISTRICT COURT

APPENDIX D

FINDINGS - ORDER (BATTSCHINGER) IN MOST RECENT PUTNAM CASE IN PENOBSCOT DISTRICT COURT

STATE OF MAINE
PENOBSCOT, ss.

MAINE DISTRICT COURT
DISTRICT THREE
DIV'N.S.PENOBSCOT
DOCKET#BAN-96-SC-717
SC-97-109

Eugene L. Putnam
Plaintiff/Defendant

vs.

FINDINGS OF FACT
&
CONCLUSIONS OF LAW

Glen Battschinger
Defendant/Plaintiff

Notice of the pendency of these corresponding actions has been duly and seasonably given according to law. Consolidated hearing thereon was had before me and the allegations and the evidence were fully presented and considered.

In September of 1994 Mr. Battschinger hired Mr. Putnam to perform services for him in Mr. Putnam's capacities as a licensed surveyor and a licensed

forester. Mr. Battschinger had purchased a large parcel of land in Winterport and was implementing his plans to subdivide and harvest timber therefrom. Mr. Battschinger is a college graduate with a degree in the very fields of Mr. Putnam's licenses.

Between September, 1994 and April, 1995 Mr. Putnam performed the contracted services and regularly billed his client. The bills were substantially paid and upon presentation of the final bill, in late March, 1995, Mr. Battschinger had paid over $10,000 and owed an approximate balance of $4,800. Over the next year Mr. Battschinger paid down on that bill until a balance of $1,890.56 remained. It was in the Summer of 1996 that Mr. Battschinger decided that he had been billed too much by Mr. Putnam for the services rendered and refused to pay the remaining balance. Upon Mr. Putnam's filing of this suit for that balance, Mr. Battschinger countered with his complaint for return of about $7,000 in over-billing, but limited his claim to $3,000 so as not to exceed the small claims jurisdiction of the District Court.

During the performance of Mr. Putnam's duties, Mr. Battschinger stayed

intimately involved with the various operations and occasionally worked in the woods with Mr. Putnam and his survey crew. Mr. Putnam also working in conjunction with a civil engineer hired by Mr. Battschinger to prepare maps and other presentations for reviewing authorities. Mr. Battschinger states that he had developed a close personal relationship with Mr. Putnam during this time period and that this factor prevented him from questioning Mr. Putnam's bills or work. It is evident to the court that there is little, if any, vestige of the personal component of these parties' relationship remaining at this time. However, the court finds that Mr. Battschinger's assertions of being temporarily disabled from rational business acumen to be groundless.

Mr. Battschinger states that there was nothing that Mr. Putnam was supposed to do and billed for that he failed to perform and further states that he believes that Mr. Putnam put in all the hours he billed. He just takes the position that Mr. Putnam was too thorough in his efforts and thereby billed too many hours.

The court finds that Mr. Battschinger was kept constantly aware of the services performed by Mr. Putnam and

accepted all as proper under their agreement. The periodic payments of regular billings and a failure to substantially question any invoice or itemized service performed is the best evidence of the fact that all was going as originally contemplated by the parties or as they had periodically altered those plans as the projects progressed. In short, Mr. Battschinger simply wants the court to re-write history and order Mr. Putnam to return some of the money willingly and properly paid on account pursuant to the parties' arms-length, negotiated verbal agreement. Mr. Putnam and Mr. Battschinger were both adults, intelligent, and educated in the their mutual area of concern. Neither was mislead by the other and neither was at an unfair disadvantage. Each performed as he agreed to (except to final payment). Therefore, the court lacks legal authority to do what Mr. Battschinger requests.

The court further finds that the precipitating factor which most likely prompted Mr. Battschinger to take his current position had nothing to do with these parties' business relationship, but instead was something that happened much later involving Mr. Putnam and an adjacent owner to Mr. Battschinger's

lot. It is also evident that Mr. Battschinger finds support for his position from others who may have litigated against Mr. Putnam in the past. The court determines that Mr. Battschinger testified that he would not have pursued his $7,000 claim had Mr. Putnam refrained from suing for the $1,890 balance due. This is an incredible assertion if one assumes that Mr. Putnam honestly believed that his claim was valid. It appears that Mr. Battschinger wants this court to somehow penalize Mr. Putnam in consideration of his claim because Mr. Putnam is a regular Plaintiff in small claims cases seeking to collect his fees. This would be highly improper and the court refuses to do so. This case is to be decided on its own factual merits, which heavily support Mr. Putnam's claim as well as his defense to the specious claim countered by Mr. Battschinger.

Accordingly, the court enters judgment for Mr. Putnam on both complaints by separate order.

The Clerk is directed to incorporate these findings and conclusions into the docket by reference.

So ordered.

April 3, 1997

s/Douglas A. Clapp
Douglas A. Clapp
Judge, District Court

APPENDIX E

STATE OF MAINE RULES OF
PRACTICE FOR LICENSED SURVEYORS

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

360 STATE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS

CHAPTER 6. TECHNICAL STANDARDS OF PRACTICE

SUMMARY: This chapter outlines the minimally acceptable technical standards for land surveying in Maine.

Introduction

Section 2. General Statement

Each surveyor should counsel with the client to determine the purpose of any surveying service. The specific purpose of a survey may determine the category of service needed, the information required, the work to be done, and a sound basis for cost.

The surveyor shall conduct a reasonable search to acquire data, including but not limited to deeds, maps, certificates of title, abstracts of title, and other boundary line information in the vicinity.

Section 3. Definitions and Applications

A. Definitions - terminology used in these standards shall be defined herein, or when not defined herein, shall refer to the 1978 edition of "Definitions of Surveying and Associated Terms" as compiled by the joint committee of the American Society of Civil Engineers and American Congress on Surveying and Mapping.

Section 6. Maps

The results of a land survey should be shown on a map unless client requests otherwise.

Section 9. Exceptions

These standards shall apply to

every land boundary survey in the State of Maine, except that the Surveyor and the client may agree to exclude any land surveying work from these standards.

Section 10. Specifications-Category 1

A. Standard Boundary Survey

1. DEFINITION - A Standard Boundary Survey is defined as a sufficient investigation, study, and evaluation of all factors affecting and influencing the location of the boundaries, and including rights of way and easements of record within or immediately surrounding a certain lot, parcel or quantity of real estate. Such study and evaluation will culminate in the location or relocation on the ground of the boundaries and the determination of acres of the certain lot, parcel or quantity of real estate

2. PURPOSES - The purpose of Standard Boundary Survey is to locate, monument, describe, and map a quantity of real estate.

3. PRODUCT - A Standard Boundary Survey should produce but not be limited to:

   a. Monuments at all corners, points of curves or references to boundary lines of the involved land.

   b. A written description of the parcel.

   c. A map clearly depicting the survey as made on the ground.

   d. A written report of the surveyors findings and opinions.

9. MAPS, PLATS AND DRAWINGS - Any Standard Boundary Survey requiring a plan should be presented by a reproducible map, depicting the results of the field work, computation, research and record information.

11. DESCRIPTIONS - A description written to describe a surveyed lot, parcel or quantity of land must provide the information to locate the parcel on the ground and distinguish it from all other land.